

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

ORDER

M/s. V.K. Associates through its Sole Proprietor Smt. Kripa Gupta

Vs.

The Assistant Commissioner, Commercial Taxes, AE-II, Jaipur

::

S.B. Sales Tax Revision No. 55 / 2006

Date of order

::

July 27, 2007

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Nitin Jain for the appellant-assessee

Mr. Amit Ratnawat for Mr. R.B. Mathur for the respondent-Revenue

BY THE COURT:

1. Heard learned counsels for the parties.

2. This revision petition is directed against the order of the Tax Board dated 06.02.2006, whereby the Tax Board restored the penalty under Section 78(5) of the RST Act, 1994 (for short, 'the Act') upon the respondent-assessee amounting to Rs. 46,125/-. A perusal of the penalty order passed by the assessing authority dated 10.03.2000 shows that since no documents in support of the goods received in Truck No. RJ-14 1G 8675 were produced at the time of checking during the course of survey at the business place of the respondent-assessee on 10.03.2000 and the respondent-assessee submitted before the assessing authority a reply in writing that the bill and bilty are with his representative, who has gone outside somewhere and since he is not readily available, he is unable to produce the bill and bilty for verification and since otherwise the goods and the truck are being seized by the Revenue authorities, the decision of his case may be made on that very day.

3. The learned assessing authority without assigning any reason in the impugned penalty order passed on the same day, i.e. 10.03.2000, merely stated that since the respondent-assessee has submitted in the reply that his case may be decided on that day itself, therefore, he imposed the penalty in question of Rs. 46,125/-. The first appeal filed by the respondent-assessee was allowed by the

learned Deputy Commissioner (Appeals) on the ground that no penalty on the consignee/owner of the goods could be imposed for the period prior to 22.03.2002 as there was an amendment in Section 78(5) of the Act, whereby the words “the owner of the goods or a person authorised in writing by such owner or the person in-charge of the goods” were inserted in the said provision of Section 78(5) of the Act by Rajasthan Finance Act, 2002 w.e.f. 22.03.2002. These words were substituted for the words “the person in-charge of the goods”. Therefore, the learned Deputy Commissioner (Appeals) held that prior to this dated 22.03.2002, the penalty on the owner of goods could not be imposed. The Revenue went up in appeal before the Tax Board and the learned Tax Board, by the impugned order dated 06.02.2006 set aside the said order and restored the penalty. Hence, this revision at the instance of the assessee.

4. Learned counsel for the petitioner-assessee has submitted that the learned Tax Board has wrongly noted in its order that the bill and bilty for the goods in question checked on 10.03.2000, were in fact produced before the assessing authority a little later and he also stated this fact before the learned DC (Appeals), but instead of verifying the authenticity of these documents, the assessing

authority in a hot haste passed the impugned penalty order and imposed the penalty. He has produced before this court also a copy of the bill No. 317 dated 10.03.2000 of one M/s. Laxmi Steels, Jaipur giving the truck No. RJ-14 1G 8675 of weight of sheets of 6105 kg. in the sum of Rs. 1,54,200/-. Be that as it may, it is not for this court to go into the factual aspects of the documents, which according to learned counsel for the petitioner-assessee were produced before the assessing authority but without taking note of the same, the assessing authority passed the impugned penalty order in a hot haste.

5. The learned Tax Board also appears to have proceeded on the wrong assumption that no documents in support of the goods found at the time of checking on 10.03.2000 were available or produced.
6. The assessing authority, while exercising the penalty jurisdiction under Section 78(5) of the Act, remains a quasi-judicial authority and while passing the penalty orders, he is expected to comply with the principles of natural justice and give adequate and reasonable opportunity of hearing to the respondent-assessee for production of documents even if they are not readily available at the time of checking. There may be bonafide reasons for such non-production

of documents at the relevant point of time. There is no need to hurriedly in a hot haste manner pass a penalty order in such a manner without complying with the principles of natural justice. In the present case also, this court finds that penalty order was passed on that very day of checking itself on 10.03.2000 when during the course of a survey being conducted at the business place of the respondent-assessee, the said truck alongwith the goods arrived at the place of the consignee/owner of the goods. Therefore, without going into the question of law as to whether the penalty could be imposed on the owner of the goods for the period prior to 22.03.2002 or not, this court is of the opinion that the imposition of penalty in the present case in a hot haste was unjustified and the Tax Board has also erred in restoring that penalty by the impugned order.

7. Accordingly, this revision is allowed. The impugned orders of the Tax Board dated 06.02.2006 as well as the assessing authority dated 10.03.2000 are set aside and the matter is remanded back to the assessing authority with a direction to allow the assessee to produce the relevant documents before him in which an enquiry can be made by the assessing authority as to the genuineness and authenticity of these documents. This enquiry can even include an

enquiry from the consignor as well as the consignee, both of whom are stated to be registered dealers of the department. It is only if the genuineness of these documents is found to be doubtful or they are found to be ingenuine and the transactions are not duly recorded in the books of accounts, that the assessing authority can reimpose the penalty giving his reasons in the order.

8. With these observations, this revision is allowed.

(Dr.VINEET KOTHARI),J.

Pramod

Item No. 43